

## **BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR**

**In the matter of:**

**Duke Energy Renewables, Inc.**

**DOI Case No.**

### **ADMINISTRATIVE AGREEMENT**

This Administrative Agreement (Agreement) is entered into and between and among Duke Energy Renewables, Inc. (Duke Energy Renewables) and the United States Department of the Interior (DOI or together with Duke Energy Renewables, the Parties) to address the existence of cause for debarment as a result of Duke Energy Renewables' two misdemeanor convictions under the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§ 703-712. *See United States of America vs. Duke Energy Renewables, Inc.*, 13-CR-268-KHR (D. WY. 2013) (Misdemeanor Case).

#### **I. PREAMBLE**

##### **Background**

A. Duke Energy Renewables is a commercial renewable energy indirect subsidiary of Duke Energy Corporation. It develops, constructs, and operates utility-scale renewable energy generating facilities, primarily wind and solar, across the United States.

B. In late 2012, the United States Department of Justice (DOJ) initiated a preliminary investigation into the avian takes at Duke Energy Renewables wind facilities in Wyoming. Duke Energy Renewables fully cooperated throughout the investigation and undertook significant efforts to mitigate for past takes and minimize future takes of migratory birds at its wind power facilities in Wyoming.

C. In September 2013, Duke Energy Renewables voluntarily initiated discussions with representatives from DOI to review Duke Energy's present responsibility for purposes of potential debarment analysis. After review of the information presented, DOI requested that Duke Energy Renewables enter into an administrative agreement with DOI providing that Duke Energy Renewables engage a third-party consultant to perform an in-depth review of its compliance and ethics program (Program), to confirm the effectiveness of the Program, and to identify areas for continued improvement.

D. On November 1, 2013, DOJ and Duke Energy Renewables entered into a Plea Agreement resolving the issues of the misdemeanor case. Under the terms of the Plea Agreement, Duke Energy Renewables pleaded guilty to two misdemeanor violations under the MBTA. Duke Energy Renewables and DOJ jointly recommended a 60-month probation term (Probationary Period) as well as Duke Energy Renewables' implementation of a Migratory Bird Compliance Plan, development of an Eagle Conservation Plan and applications for take permits, and payment of agreed-upon amounts for restitution and community service.

E. On November 7, 2013, the Plea Agreement, which includes a Statement of Facts (Attachment A to the Plea Agreement) and Migratory Bird Compliance Plan (Attachment B to the Plea Agreement), was filed in the U.S. District Court for the District of Wyoming along with an Information alleging two misdemeanor counts under the MBTA. The Plea Agreement and its attachments are incorporated by reference as part of this Agreement.

F. On November 22, 2013, judgment was entered in the misdemeanor case, which included the Mandatory Conditions of Probation (Conditions of Probation) recommended in the Plea Agreement. The Conditions of Probation are incorporated by reference as part of this Agreement.

G. DOI offers the terms herein after consideration of Duke Energy Renewables' cooperation, candor, and frequent communication with the U.S. Fish and Wildlife Service (FWS), and the proactive measures taken by Duke Energy Renewables to ensure safety for wildlife in the vicinity of the facilities. For instance, as part of its adaptive management response, Duke Energy Renewables initiated a proof-of-concept radar project designed to trigger curtailment after detection of large birds. Duke Energy Renewables also voluntarily implemented daytime curtailment, including daylight-hour full curtailment and "informed curtailment" based on biologist observations in areas of high eagle use. Duke Energy Renewables' substantial compliance efforts are credited by the FWS in this Agreement.

H. Therefore, in consideration of the promises, undertakings, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

## **II. TERMS AND CONDITIONS**

1. **TERM.** The Effective Date shall be the date this Agreement is signed by Debra E. Sonderman, Director, Office of Acquisition and Property Management, who serves as DOI's Suspending and Debarring Official (SDO). The period of this Agreement shall be from its Effective Date until December 1, 2018, the date on which Duke Energy Renewables' probation ends. If grounds exist that lead the Court to reduce the probation period, the SDO may reduce the period of this Agreement accordingly.

2. **INDEPENDENT COMPLIANCE REVIEW CONSULTANT.** Within twenty-one (21) calendar days of the Effective Date, Duke Energy Renewables shall propose to DOI for approval the name of an independent expert consultant in corporate compliance and ethics programs (Consultant) to conduct the Compliance Review. After approval of the Consultant by DOI, Duke Energy Renewables will engage the Consultant, the cost of which will be borne by Duke Energy Renewables. In the engagement agreement, Duke Energy Renewables will release the Consultant from any liability relating to the Consultant's work regarding the assessment of Duke Energy Renewables' Program.

3. **COMPLIANCE REVIEW.**

a. The Compliance Review will be completed within ninety (90) calendar days of the date that DOI approves the Consultant or the date that DOI and Duke Energy Renewables have fully executed this

Agreement, whichever date is later, unless a reasonable extension requested by Duke Energy Renewables is granted by DOI.

- b. The Compliance Review shall include a review of relevant non-privileged documents and interviews of key Duke Energy Renewables personnel and may include interviews of other personnel deemed relevant by the Consultant. Duke Energy Renewables will grant the Consultant access to Duke Energy Renewables' non-privileged records and key personnel, and will cooperate with the Consultant as necessary for the Consultant to complete its work. Duke Energy Renewables will also encourage employees to cooperate fully with the Consultant. The Consultant will determine the need for, and location of, any site visits.
- c. The Consultant will inform Duke Energy Renewables of any concerns or deficiencies it has identified during the course of its Compliance Review to afford Duke Energy Renewables a timely opportunity to mitigate risks and address any concerns or deficiencies. At any time during the review process, Duke Energy Renewables may meet and confer with the Consultant regarding any noted deficiencies in Duke Energy Renewables' Program.
- d. The Consultant will provide its Draft Report to Duke Energy Renewables, DOI and the DOI Office of Inspector General (OIG) within thirty (30) calendar days of completion of the Compliance Review. The Draft Report will note whether Duke Energy Renewables provided the documents requested for review and cooperated during interviews of personnel. The Draft Report will assess and provide the Consultant's opinion regarding whether Duke Energy Renewables' Program meets the Standard of Review described below in section 6 (Standard).

#### 4. REVIEW OF COMPLIANCE REVIEW REPORT.

- a. Duke Energy Renewables, DOI, and DOI OIG will review the Draft Report and subsequently meet to discuss the Draft Report. Duke Energy Renewables, DOI, and DOI OIG will provide any comments to the Consultant regarding the Draft Report, with the collective goal of ensuring that Duke Energy Renewables' Program meets the Standard. If the Draft Report contains suggested changes to Duke Energy Renewables' Program, either Duke Energy Renewables or DOI may request a meeting to discuss the suggested changes. Duke Energy Renewables will be given the opportunity to implement any changes to its Program necessary to meet the Standard.
- b. After providing Duke Energy Renewables the opportunity to amend its Program and implement changes, if any, the Consultant will then finalize

and resubmit the Report taking into account any amendments and changes to Duke Energy Renewables' Program (Final Report). After the Final Report is submitted to Duke Energy Renewables, DOI and DOI OIG, DOI will determine whether Duke Energy Renewables' Program meets the Standard. If DOI determines that it would be effective to meet to discuss the Final Report, a meeting will be arranged.

- c. If the SDO determines that Duke Energy Renewables' Program meets the Standard, the SDO will not propose Duke Energy Renewables for debarment; however, the SDO will require Duke Energy Renewables to perform under paragraph 7 of this Agreement.
- d. If, however, the SDO determines that Duke Energy Renewables' Program fails to meet the Standard, DOI OIG will recommend that the SDO enter into a negotiated compliance and ethics agreement with Duke Energy Renewables. The negotiated compliance and ethics agreement would be tailored to address any deficiencies in Duke Energy Renewables' Program. The recommended duration of such an agreement would take into consideration the time and effort Duke Energy Renewables expended in undergoing the assessment of its Program and subsequent revisions.

5. **DOCUMENTS TO BE REVIEWED.** Unless such documents are subject to legal privilege, Duke Energy Renewables will make the following documents available for use and review by the Consultant:

- a. copies of the most recent compliance audits for each of the wind power projects in Wyoming;
- b. any work plans and action plans that have been or will be implemented as a result of the compliance audits and the results of such implementation;
- c. any records documenting training; and
- d. any other documentation deemed relevant to the Consultant for conducting its review.

6. **STANDARD OF REVIEW.** The Consultant will review the extent to which Duke Energy Renewables has an effective compliance and ethics program pursuant to section 8B2.1(a) – (c) of the U.S. Sentencing Guidelines.

7. **COMPLIANCE WITH THE CONDITIONS OF PROBATION.** Duke Energy Renewables will comply with the terms and Conditions of Probation, and will provide the following information to DOI and DOI OIG:

- a. Duke Energy Renewables shall notify the SDO and the DOI OIG Debarment Program Manager within ten (10) calendar days if the Court finds Duke Energy Renewables' is in violation of the Conditions of Probation.

- b. When available, Duke Energy Renewables will submit to the SDO and the DOI OIG Debarment Program Manager the following documents: (i) agreed upon minutes from the progress meetings between Duke Energy Renewables, the FWS, and DOJ which take place semiannually for the first two years of the Probationary Period and annually thereafter during the Probationary Period, as set forth in the Conditions of Probation; (ii) annual progress reports regarding implementation of the Migratory Bird Compliance Plan, as set forth in the Conditions of Probation; (iii) any correspondence between Duke Energy Renewables and the FWS and/or DOJ regarding failure to meet conditions of probation; (iv) a copy of the final version of the applications for the FWS Programmatic Eagle Take Permits for Campbell Hill and Top of the World wind projects; and (v) a copy of the final Eagle Conservation Plan and take permit issued by the FWS. Duke Energy Renewables will submit these documents pursuant to the schedules set forth in the Conditions of Probation.

8. **RELEASE.** Duke Energy Renewables hereby releases DOI, its agents, attorneys, and employees in their official and personal capacities of any and all liability claims arising out of or related to the FWS investigation, DOI OIG review, and the discussions leading to this Agreement and its administration.

9. **SUCCESSORS AND ASSIGNS.** The terms, conditions, and obligations of this Agreement shall survive the reorganization of Duke Energy Renewables' corporate structure and shall be fully binding upon any organization that is a successor in interest or an assignee to substantially all of the assets or shares of Duke Energy Renewables. The successor or purchaser may request that the SDO review the need for continuation of the terms and obligations of this Agreement.

10. **REPRESENTATIONS.** Duke Energy Renewables represents that all written materials and other information related to factual matters supplied to DOI by Duke Energy Renewables during the course of discussions preceding this Agreement are true and accurate to the best information and belief of Duke Energy Renewables' signatory to this Agreement. Duke Energy Renewables understands that this Agreement is executed on behalf of DOI in reliance upon the truth and accuracy of all such representations.

11. **NO WAIVER.** Nothing in this Agreement limits DOI or any other Federal agency from initiating administrative actions on unrelated matters, including suspension or debarment, should information indicating the propriety of such action come to the attention of the SDO or any other Federal agency.

12. **BREACH.** Duke Energy Renewables and DOI agree that the two misdemeanor convictions constitute cause for debarment and that these causes for debarment survive the execution of this Agreement; however, DOI will not initiate suspension and/or debarment proceedings against Duke Energy Renewables based on these grounds unless there is a material breach of this Agreement. Duke Energy Renewables and DOI agree that repeated violations of non-material provisions of this Agreement may cumulatively become a material breach of this Agreement. DOI will provide written notice to Duke

Energy Renewables of any alleged failure to meet their material obligations under the terms of this Agreement. If Duke Energy Renewables fails to submit an acceptable plan of corrective action to DOI within fifteen (15) calendar days of receipt of such notice, or as otherwise permitted by DOI, DOI OIG may recommend a suspension and/or debarment action be taken against Duke Energy Renewables.

13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, related to the subject matter hereof.

14. **AUTHORITY OF THE UNITED STATES.** The provisions of this Agreement in no way alter or diminish the rights and responsibilities of the United States to carry out its lawful functions in any proper manner.

15. **AUTHORIZED SIGNATORIES.** The signatory of each party is fully authorized to execute this Agreement and represents that he or she has the authority to bind DOI and Duke Energy Renewables as the case may be.

16. **SEVERABILITY.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement.

17. **NOTICES:** Any notices or information required hereunder shall be in writing and delivered by facsimile with receipt or mailed by registered or certified mail, postage prepaid, as follows:

If to DOI, to:

Debra E. Sonderman, Director  
Office of Acquisition and Property Management  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240  
Fax: 202-513-7645

If to DOI OIG, to:

Stanley Stocker  
Debarment Program Manager  
Office of Inspector General  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240  
Fax: 202-219-1203

If to Duke Energy Renewables, Inc. to:

Office of the General Counsel  
Duke Energy Business Services  
550 South Tryon Street; DEC45A  
Charlotte, NC 28202  
Fax: 980-373-8534

Or such other address as any party shall have designated by notice in writing to the other party.

18. PUBLIC DOCUMENT. This Agreement is a public document.

19. FEDERAL AWARDEE PERFORMANCE AND INTEGRITY INFORMATION SYSTEM. Pursuant to the requirements of the Duncan Hunter National Defense Authorization Act of 2009, this Agreement will be entered into the Federal Awardee Performance and Integrity Information System.

20. HEADINGS. Section and paragraph headings are intended for the convenience of the parties and are not to be used to interpret this Agreement.

21. AMENDMENT. This Agreement may be amended or modified only by a written document signed by both parties.

22. CERTIFICATION. By signature hereto, the individual executing this Agreement on behalf of Duke Energy Renewables certifies that he understands that the provisions of 18 U.S.C. § 1001 are applicable to the statements and representations contained herein to the best of his knowledge and belief.

23. EXECUTION. This Agreement may be executed in counterparts which, taken together, shall have the same force and effect as a single instrument, and executed copies may be delivered electronically or via facsimile, with originals to follow as soon as practicable.

**UNITED STATES DEPARTMENT  
OF THE INTERIOR**

By:           /signed/            
Debra E. Sonderman

Title: Director, Office of Acquisition and Property Management

Date: 12/16/2014

**DUKE ENERGY RENEWABLES, INC.**

By:           /signed/            
Greg Wolf

Title: President

Date: 12/3/2014